IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

The Union of India **VS**. M/s Aditya Cement & Anr.

D.B. CIVIL CENTRAL EXCISE APPEAL NO.05/2005
against the order dt.4.7.03 passed by learned Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi.

Date of judgment : 8th Nov., 2005

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Reportable

Mr. V.K. Mathur for the appellant.
Mr. Rajendra Mehta for the respondents.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

This appeal is directed against the order of learned Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi dt.4.7.2003. The question of law raised in this appeal is as under:-

> "Whether the modvat credit was admissible or not on the items used in workshop meant for repairing the machine or machinery which was used for manufacture of final product namely cement."

The controversy is confined to claim of respondent-assessee to modvat credit on drilling machines, welding machines and lubricants used by the respondent-assessee in workshop for general maintenance purpose of plant and machinery used in manufacture of cement. The claim of the assessee to avail modvat credit of Excise Duty paid on such drilling machines, welding machines and lubricants was denied by the Revenue inter alia on the ground that these machines used in workshop are not used in producing or processing of the final product.

The claim of the assessee to avail modvat credit relates to the period ending prior to July 1996 under Rule 57 Q of the Central Excise Rules, 1944 as it stood at the relevant time.

The Tribunal relying on its earlier decision in Jawahar Mills Limited Vs. CCE, Coimbatore, 1999 (108) ELT 47(T) in which the Tribunal has held that modvat credit in respect of control panel, cable, welding electrodes, etc. is allowable, accepted the contention of the assessee that articles in question are used in the factory of the assessee and is essential part for up-keeping and better functioning of the machines, therefore, they are eligible for modvat credit as capital goods within the meaning of Rule 57Q.

The contentions raised before us are on the same lines. It would be apposite here to reproduce Rule 57Q to focus on the controversy in its fullness:-

Rule 57Q. Applicability.- (1) The provisions of this section shall apply to finished excisable goods of the description specified in the Annexure below (hereinafter referred to as the "final products") for the purpose of allowing credit of specified duty paid on the capital goods used by the manufacturer in his factory and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, or as the case may be, on such capital goods, if such capital goods have been permitted to be cleared under rule 57S, subject to the provisions of this section and the conditions and restrictions as the Central Government may specify in this behalf:

Provided that credit of specified duty in respect of any capital goods produced or manufactured -

(a) in a free trade zone and used for the manufacture of final products in any other place in India; or

(b) by a hundred per cent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park [or by a unit in Software Technology Parks] and used for the manufacture of final products in any place in India,

shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods under section 3 of the Customs Tariff Act, 1975(51 of 1975) equivalent to the duty of excise paid on such capital goods.

Explanation.- For the purpose of this section,-

(1) "capital goods" means-

(a) machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products;

(b) components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose; and

(c) moulds and dies, generating sets and weigh-bridges used in the factory of the manufacturer.

[(d) following goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of manufacturer-

(i) All goods falling under heading Nos.84.02, 84.05, 84.06, 84.11, 84.12, 84.16, 84.17, 84.19, 84.21, 84.23, 84.25 to 84.28, 84.80, 85.05, 85.35, 90.11, 90.12, 90.13, 90.16, 90.17 and 90.24 to 90.31;

(ii) auxiliary plants falling under heading No.84.04 for use with boilers of headingNo.84.02;

(iii) I.C. Engines (other than engines of motor vehicle) falling under heading No.84.07 or 84.08;

(iv) compressors (other than of a kind used for refrigerating and air conditioning applications) falling under heading No.84.14;

(v) electric generating sets (of output exceeding 75KVA) falling under headingNo.85.02;

(vi) transformer (of power handling capacity exceeding 75 KVA) falling under heading No.85.04;

(vii) Goods (other than for medical use) of heading No.90.22;

(viii) goods (other than of a kind used for refrigerating and air conditions applications) falling under heading Nos. 84.81 and 90.32;

(ix) components, spares and accessories of the goods specified against item (i) to (viii) above;

(x) refractories falling within Chapter 69;

(e) goods specified in the Table in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.68/89-Customs, dated the 1st March, 1989, and used in the factory of manufacturer]

(2) “specified duty” means duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975).

(2) Notwithstanding anything contained in sub-rule (1), no credit of the specified duty paid on capital goods (other than those capital goods in respect of which credit of duty was allowable under any other rule or notification prior to the 16th day of March, 1995) shall be allowed if such capital goods were received in the factory before the 16th day of March, 1995.]

Apparently, emphasis of the appellant is on clause (a) of sub-Section (1) of Explanation appended to Rule 57Q, which defines “capital goods”, which provides for modvat credit on 'duty paid capital goods used in manufacture of specified goods,' whereas the focus of contention raised by the learned counsel for the respondents is that wider scope of capital goods appearing from enumeration of various goods included in clauses (a), (b), (c) and (e) of the definition of capital goods contained in Rule 57Q which includes not only machines directly involved or used for producing or processing any goods or for brining about any change in any substance for the manufacture of final products, but eligibility of modvat credit extends to components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose; and moulds and dies, generating sets and weigh-bridges used in the factory of the manufacturer. The different heads of the Central Excise Tariff Act, 1985 enumerated in sub-clause (b) and (d) of clause (1) of Explanation of which we note that for availing modvat credit the direct use of those articles used for producing or processing any goods or for brining about any change in any substance for the manufacture of final products is not essential.

In fact, the contention of the revenue is that since drilling machines, welding machines and lubricants are not used for producing or processing any goods or for brining about any change in any substance for the manufacture of final products, they are not eligible for modvat credit as capital goods, notwithstanding the admitted case that indirectly

the articles in question are being used in the factory for manufacture and are essential for up-keeping and maintenance of those machines which are directly involved or used for producing or processing any goods or for brining about any change in any substance for the manufacture of final products.

The perusal of Rule 57Q as a whole leaves no room of doubt in our mind that in all circumstances, direct involvement with producing or processing any goods or for brining about any change in any substance for the manufacture of final products with the machines, machinery, plant, equipment, apparatus, tools or appliances are not essential condition, if it falls in any of the clauses (b), (c) and (d) the essential condition of direct involvement of the capital goods in the manufacture in process is not to be seen.

In this conclusion, we are fortified by decision of the Supreme Court in Commissioner of C.Ex., Coimbatore Vs. Jawahar Mills Ltd. **2001(132) E.L.T.3 (SC) page 3.** The articles which are subject matter before the Supreme Court were power cables, capacitors, control panels, cables distribution boards, switches and starters, air compressors and electric wire cables.

We may notice here that the Supreme Court while considering the definition of capital goods under Rule 57Q, as it stood amended, was of the view that language used in the Explanation to define capital goods is liberal. It said :-

> “4. The aforesaid definition of 'Capital goods' is very wide. Capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be 'Capital goods', and, therefore, qualify for availing Modvat credit. Per clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purposes enumerated therein would also be 'Capital goods' and qualify for Modvat credit entitlement. Clause (c) makes moulds and dies, generating sets and weigh bridges used in the factory of the manufactures as capital goods and thus qualify for availing Modvat credit. The goods enumerated in clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the explanation is very liberal.”

Apparently, the direct use of machines which are ordinarily considered as capital goods is not an essential pre-condition in order to qualify for availing modvat credit on excise duty paid on it.

Object and purpose of expression “used in manufacture of final product” was considered by the Supreme Court in Indian Farmers Fertilisers Cooperative Ltd. Vs. Collector of Central Excise, Ahmedabad – **(1996)5 S.C.C. 488.**

It was a case in which vide notification issued under Section 5A of the Central Excise Act exemption was granted to such raw naphtha as is used in the manufacture of ammonia before such ammonia is used

elsewhere in the manufacture of fertilisers. The end product of the assessee was urea which is a fertiliser. The ammonia produced by the use of raw naphtha was used by the assessee in its other plant for water treatment, steam generation and inert gas generation plants. The concession availed by the assessee on purchase of raw naphtha was sought to be denied inter alia on the ground that ammonia produced by the assessee was not used in manufacture of fertiliser but was used for the other purposes like water treatment, steam generation and inert gas generation plants.

The Supreme Court negatived the contention of the Revenue explaining the expression "used in the manufacture of" does not necessary relate to direct use of ammonia in manufacture of fertiliser but even its use in the activity essential for the purpose of manufacture of Urea would make it eligible for exemption.

The Court said:

> "The exemption is made available to such raw naphtha as is used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers. That the raw naphtha is used to make ammonia is unquestioned. The ammonia is used directly in the manufacture of fertilisers; the raw naphtha so used is, it is not disputed, eligible to the exemption. The question is whether the ammonia used in the off-site plants is also ammonia which is "used elsewhere in the manufacture of fertilisers". The water treatment, steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end product urea, which is a fertiliser. These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for

> producing ammonia that is utilised directly in the urea plant. The exemption notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilizers. The exemption notification must be so construed as to give due weigh to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption."

The Court went on to say:-

> "It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular4 end product is part and parcel of the manufacturing process of that end product."

The two decisions clearly lay down that the language used in the exemption notification or Rules governing the conditions for tax exemption must be so considered to further the object for which they have been made. They also established that capital goods used in the manufacture or which they are required to be used in manufacture of a particular article must be given a liberal interpretation so as to include all processes and requirements **which are essential for smooth running of the plant engaged in the manufacture of the end product to come within the ambit of expression "used in manufacture of**'. All those activities which are essential for running the plant or bringing into

existence the end product are held to be part of the process of manufacture of end product.

Keeping in view, if we further explore the scope and ambit of Rule 57Q, the definition of “capital goods” under clauses (b) (c) and (d) of the Explanation as they existed at the relevant time does give out that the exemption extended to 'the user of capital goods in manufacture of the end product' has been used in wider and liberal sense and not confined to any machine or capital goods in the manufacture process which brings into existence the end product. If the user which is integrally connected with direct process and is an activity necessary for carrying on the manufacture process, it has to be treated as part of manufacturing process.

It would be pertinent to draw notice towards the fact that under clause (b) of Explanation-1 defining “capital goods” components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose have also been made eligible for availing modvat credit of the excise duty paid thereon. Obviously, the accessories in ordinary sense are not directly involved in the process of manufacture. It would be apposite to notice the meaning of accessories in the context which finds place in Explanation.

In the Random House Dictionary the word “accessory” is defined as a subordinate or supplementary part, object, etc. used mainly

for convenience, attractiveness, safety, etc."

In legal terminology the Black's Law Dictionary explains the word "accessory" as anything which is joined to another thing as an ornament or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it. **It also means a thing of subordinate importance, aiding or contributing in secondary way or assisting in or contributing to as a subordinate**.

The Bombay High Court had an occasion to consider what is meant by accessories as a term used in the Excise law in Precision Rubber Industries Vs. Collector of Central Excise, **1990(49) ELT 170 (Bom.).** The Division Bench of Bombay High Court while considering distinction between the `Component' and 'Accessories' in relation to any `Machine' said that:-

> "The word "component" means a constituent part or ingredient such as the various components of electric motor. In the case of chemical system, it is used to denote an ingredient of a chemical compound. In another sense the word is used to denote smallest unit of classification. On the other hand, "accessory" has altogether different connotation. It signifies aiding or contributing in a secondary or subordinate way. It is used to denote a role or status which is supplementary or secondary to something of greater or primary importance. The word "accessory" is used to suggest that something or somebody is incidental to the main subject. In other words, accessory is something which is inessential and secondary or subordinate to another object. While "component" is always an essential element of a machine, an accessory is an aid to the machine. A machine is not a machine without a component. But a machine can perform without a given accessory."

Obviously, the accessories which have not directly been involved with the primary function of machine of which it is an accessory that is to say direct involvement in the primary functioning of machine is not the necessary requirement of capital goods to be eligible for modvat credit if it falls within clauses (b), (c) or (d) of Explanation 1. It may be assumed that for the purpose of clause (a) such machines which are primarily involved in manufacturing are included in the capital goods but if we come to clause (b) which includes components, spare parts and accessories to such machines appliance its tools etc. which are enumerated in clause (a) and which are used for the purpose of manufacturing mentioned in clause (b) that accessories of machine must be of such machines which are used in manufacturing and processing of the goods or are used for making change in the goods. It cannot be gainsaid that where there is a plant and machinery with which activity of manufacturing is going on, the principal plant and machinery suffers wear and tear in the course of its operation and requires regular back up through proper up-keep and normal maintenance for which the supplementary and subordinate machinery are required to be kept at site.

On admitted facts, the drilling machines, welding machines and lubricants were brought in factory for use in up-keep and maintenance of plant and machinery which are directly used in manufacture of excisable articles and the capital goods in question were certainly of subordinate necessity to such plant and machinery to the running of plant and is otherwise essential for its smooth and regular

operations. Without proper up-keep and maintenance, the principal plant and machinery cannot function properly and the use of such capital goods is essential for smooth running of plant with greater efficiency. In other words, the goods in question are essential supplement to the plant and machinery for use in manufacturing goods, for its greater efficiency and better results and thus, it is an integral part of the process with which the primary machines are engaged. If we look from these aspects, the combined effect of the liberal view of the provision and the user of the machine as a supplementary or incidental to the main machines and except for the direct user, there is no impediment for the goods in question qualifying as capital goods eligible for modvat benefit.

We have no hesitation in coming to the conclusion that the Tribunal was justified in holding the goods in question namely welding machine, drilling machine and lubricants as a capital goods eligible for modvat credit.

The appeal, therefore, fails and is hereby dismissed. No order as to costs.

[R.P. VYAS], J. [RAJESH BALIA], J.

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